

NEW HAMPSHIRE REAL ESTATE COMMISSION

COMMISSION MEETING

JULY 20, 2004

A meeting of the New Hampshire Real Estate Commission was held on Tuesday, July 20, 2004 at 8:30 a.m. in Room 425, State House Annex, 25 Capitol Street, Concord, New Hampshire 03301.

Meeting called to order at 8:30 a.m. by Chairman Arthur Slattery

Present: Commissioners Arthur Slattery, Robert Stephen, Pauline Ikawa, Nancy LeRoy, Barbara Heath, Executive Director Beth Emmons, and Investigator Ann Flanagan.

- I. Motion by Commissioner Ikawa, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on April 20, 2004. Motion by Commissioner Heath, seconded by Commissioner LeRoy, to approve and accept the minutes of the Commission meeting held on June 15, 2004.

II. APPOINTMENTS

8:30 a.m. - Equivalency Interviews - NONE

8:55 a.m. - ROBERT EISELE appeared before the Commission to explain a previous legal incident prior to applying for an original salesperson's license. After review and discussion, the Commission decided to table its decision until the Commission is in receipt of a positive letter from Mr. Eisele's Counselor stating that Mr. Eisele has successfully completed his program. Once the Commission is in receipt of the letter, Mr. Eisele is to appear before the Commission for its decision on the matter.

9:20 a.m. - JOHN POLIMENO, JR of Alpine Village Properties, Inc. appeared before the Commission to discuss the Commission's decision at its May meeting on whether a real estate company who places short term rentals for homeowners and markets their properties, has an obligation to provide to the homeowner tenant identities of past landlord clients. After review and discussion, the Commission stated that under RSA 331-A, Mr. Polimeno would only have an obligation to provide to the homeowners that he represents, a list of tenant names only.

11:20 a.m. - LEIGH BOSSE appeared before the Commission to request the Commission to reconsider its decision of Complaint File No. 2003-03-05 Wayne & Maureen DeKoning and New Hampshire Real Estate Commission vs. Leigh Bosse. Mr. Bosse requested that the Commission reconsider its decision of the disciplinary fines imposed. The Commission stated that they would review the record and hearing transcripts and exhibits for reconsideration of the disciplinary fines imposed. A decision will be made upon review.

III. **DISCUSSION**

LEGISLATION & RULEMAKING – The Commission decided to table it's discussion of possible legislative and rulemaking changes and schedule the discussion for the August meeting.

IV. **OTHER BUSINESS**

1. Tuesday, August 17, 2004, was unanimously approved as the date for the next regular meeting.

2. CASE EVALUATIONS

(a) **FILE NO. 2004-006**

Evaluator: Commissioner Slattery

Determination: No violation, should not be heard.

(b) **FILE NO. 2004-007**

Evaluator: Commissioner Slattery

Determination: No violation, should not be heard.

(c) **FILE NO. 2004-015**

Evaluator: Commissioner Slattery

Determination: Should be heard, hearing to be scheduled. In the alternative, the Commission unanimously decided to offer the Respondent a Settlement Agreement with a disciplinary fine in the amount of \$1,000.00.

3. ORDERS

The following Order was issued by the New Hampshire Real Estate Commission. A copy of the Order is attached and becomes part of the official minutes of this meeting.

FILE NO. 2003-05-03 NEW HAMPSHIRE REAL ESTATE COMMISSION VS JOHN R. ROBERGE

4. SETTLEMENT AGREEMENTS

The following Settlement Agreement was issued by the New Hampshire Real Estate Commission. A copy of the Settlement Agreement is attached and becomes part of the official minutes of this meeting.

FILE NO. 2004-004 JAMES & JOANNE BORDA VS JAMES PEMBROKE

V. **HEARING 9:30 AM**

FILE NO. 2002-09-02 CAMIL SAADE VS LYDIA FORTIER & LAURIE POSHPECK

Evaluator: Commissioner Slattery

The following persons were present at the hearing:

Commission: Commissioners Robert Stephen, Pauline Ikawa, Barbara Heath, Nancy LeRoy,
Executive Director Beth Emmons and Investigator Ann Flanagan.

Stenographer: Harry McKenna

Nolin, McKenna and Duffy Reporting
Associates
P.O. Box 1658
Dover, NH 03821

Evaluator: Commissioner Slattery evaluated the above matter and abstained from participation in the discussion and resulting decisions.

Complainant: Camil Saade

3 Brook Road #8
Salem, NH 03079

Attorney: Pro Se

Witnesses: None

Respondents: Lydia Fortier

30 Cove Road
Salem, NH 03079

&

Laurie Poshpeck

Prudential Verani Realty
130 Main Street
Salem, NH 03079

Attorney: Pro Se

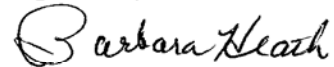
Witnesses: None

DECISION: Pending – subject to review of transcripts and exhibits.

VI. **ADJOURNMENT**

Motion by Commissioner Stephen, seconded by Commissioner Ikawa to adjourn the meeting. Chairman Slattery adjourned the meeting at 1:15 p.m.

Respectfully submitted,

A handwritten signature in cursive script that reads "Barbara Heath".

Barbara Heath
Clerk

NEW HAMPSHIRE REAL ESTATE COMMISSION

ORDER

FILE NO. 2003-05-03

NEW HAMPSHIRE REAL ESTATE COMMISSION

V

JOHN R. ROBERGE

This matter comes before the Real Estate Commission on the complaint of its Investigator, Ann Flanagan, who alleges violations of NH RSA 331-A:26 XXXVII by John R. Roberge. The Real Estate Commission after notice and hearing in the above captioned matter makes the following findings of fact:

1. John R. Roberge (hereinafter referred to as Respondent) was licensed as a real estate salesperson on 01/07/1988 and was licensed as a real estate broker on 07/10/1989, and was so licensed at the time of the alleged violation.

2. On 12/03/2002 Respondent was convicted of Criminal Threatening, Class A Misdemeanor, to wit:

“The defendant did threaten to commit any crime against the person of another with a purpose to terrorize any person to wit, Roberge made statements that Carolyn Roberge was done and that he would take care of her for calling the police and stated several times that there would be hell to pay for everyone involved and made threats to return to the premises after getting released and burn the apartment building down placing Carolyn Roberge in fear for her safety.”

Respondent received a twelve (12) month suspended sentence and was required to continue drug/alcohol counseling.

3. Respondent failed to disclose this conviction to the New Hampshire Real Estate Commission in writing within thirty (30) days pursuant to NH RSA 331-A:26, XXXVII.

4. Respondent indicated on his Form 11-A, signed notarized reply to the complaint, that it was an inadvertent oversight, and that he would disclose it on his license renewal application.

5. Respondent testified that he was not aware of the law requiring him to notify the Commission within thirty (30) days regarding his conviction, but that he knew he would have to disclose it on his license renewal application.

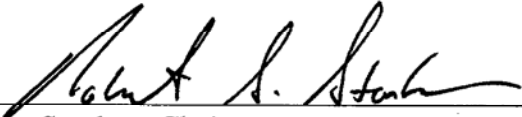
Based on the foregoing findings of fact, the Commission hereby issues the following rulings of law:

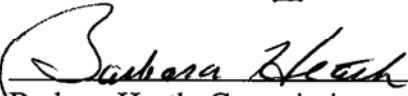
Respondent was convicted of Criminal Threatening, Class A Misdemeanor involving the threat of arson and physical violence. Respondent did not inform the Commission in writing within thirty (30) days of being convicted. Therefore, the Commission rules that Respondent did violate RSA 331-A:26, XXXVII.

The Commission expresses the seriousness of this matter and hereby Orders Respondent to pay a disciplinary fine to the State of New Hampshire General Fund in the amount of \$1,000 within six (6) months of the date of this Order. The Commission further expresses concern about Respondent's lack of knowledge regarding the real estate licensing laws which regulate him and hereby also Orders Respondent to attend a New Hampshire Real Estate Commission accredited continuing education core course within thirty (30) days of the date of this Order.

Under the provisions of RSA 331-A:28, III, this disciplinary action is subject to appeal in the Superior Court. The Respondent has thirty (30) days from the date of this Order in which to file an appeal. Such an appeal will suspend the Commission's disciplinary action pending resolution of the appeal. If this decision is not appealed within thirty (30) days, this Order will become final.

Commissioner LeRoy evaluated this case and did not take part in the hearing or decision.


Robert Stephen, Chairperson
ACTING
7/20/04
DATE


Barbara Heath, Commissioner
7/20/04
DATE


Pauline Ikawa, Commissioner
7/20/04
DATE

BEFORE THE
NEW HAMPSHIRE REAL ESTATE COMMISSION
CONCORD NH 03301

In the Matter of:

File No. 2004-004 James & Joanne Borda v. James Pembroke (Wisdom Realty)
Allegations: Rea 701.01

SETTLEMENT AGREEMENT

In order to avoid the delay and expense of further proceedings and to promote the best interests of the public and the practice of real estate, the New Hampshire Real Estate Commission ("Commission") and James Pembroke ("the Licensee" or "the Respondent"), a real estate salesperson currently licensed by the Commission until July 28, 2004, agree to resolve certain allegations of professional misconduct now pending before the Commission in accordance with the following terms and conditions:

1. The parties stipulate that the Commission has jurisdiction to institute a disciplinary proceeding against the Respondent pursuant to RSA 331-A:29, I and RSA 541-A:31, V, and if such a proceeding were commenced, the allegations against the Respondent would be:

Respondent admits that he did not present a non-agency disclosure form to Complainants; however there was no harm to Complainants which resulted from this oversight as Complainants expressed clear understanding that they knew Respondent was not their agent.

2. The Respondent acknowledges and does not contest the allegations described in Paragraph 1 above.

3. The Respondent consents to the Commission imposing the following discipline, pursuant to RSA 331-A:28, I. The Respondent shall pay a disciplinary fine to the New Hampshire Real Estate Commission in the amount of One Hundred Dollars (\$100) made payable to the Treasurer, State of New Hampshire within thirty (30) days of the effective date of this Agreement.
4. The Respondent's failure to adhere to any requirement imposed by this Agreement shall be a separate and sufficient ground for disciplinary action by the Commission.
5. Except as provided in Item 3 and 4 above, this Agreement shall forever bar further disciplinary action or other adverse action by the Commission based upon the specific allegations described above in Paragraph 1, provided, however, that this Agreement may be considered by the Commission in determining whether the Respondent has engaged in a pattern of misconduct, or in determining the nature of any sanctions which may be imposed in any subsequent disciplinary proceeding arising out of different misconduct allegations.
6. The Respondent voluntarily signs this Settlement Agreement and states that no promises or representations have been made to him other than those terms and conditions expressly stated herein.
7. Respondent understands that his action in entering into this agreement is a final act and not subject to reconsideration or judicial review or appeal.
8. Respondent has had the opportunity to seek and obtain the advice of an attorney of his choosing in connection with his decision to enter into this Agreement.
9. Respondent understands that the Commission must review and accept the terms of this Agreement. If the Commission rejects any portion, the entire Agreement shall be

null and void. Respondent specifically waives any claims that any disclosures made to the Commission during its review of this Agreement have prejudiced his right to a fair and impartial hearing in the future if this Agreement is not accepted by the Commission.

10. Respondent certifies that he has read this document titled Settlement Agreement.

Respondent understands that he has the right to a formal adjudicatory hearing concerning this matter and that at said hearing he would possess the rights to confront and cross-examine witnesses, to call witnesses, to present evidence, to testify on his own behalf, to contest the allegations, to present oral argument, and to appeal to the courts. Further, Respondent fully understands the nature, qualities and dimensions of these rights. Respondent understands that by signing this Agreement, he waives these rights as they pertain to the misconduct described herein.

11. The effective date of this Agreement shall be on the date it is signed by the representative of the Commission shown below.

For the Respondent

I, James Pembroke, have reviewed the forgoing Settlement Agreement settling misconduct allegations pending against me, and, of my own free will and without duress, and being knowledgeable about all of the consequences, admit to the validity thereof, and agree to all of the terms of this Settlement Agreement. Further, I knowingly and freely waive my right to further notice, opportunity for hearing, substantial evidence, and

findings and conclusions with regard to the allegations, which have been settled by the terms of this Settlement Agreement.

Dated: June 9, 2004

James P. Pembroke
Respondent

On this 9th day of June A.D. 2004
personally appeared the person who subscribe to the following instrument and acknowledged the same as her/his voluntary act and deed before me:

Pamela M. Hunsbarger
Justice of the Peace/Notary Public

My commission expires:

September 25, 2004

For the Commission

Dated: July 20th, 2004

Beth A. Emmons
Beth A. Emmons
Executive Director
of the NH Real Estate Commission